ASTSWMO POSITION PAPER
128(a) Brownfields Funding

Overview

A robust brownfields[1] program at all levels of government, working in concert with the private sector, is essential to the nation's environmental, economic, and social health. Without adequate funding for State, Territorial, and Tribal Nation's[2] brownfields and voluntary cleanup programs, the benefits these programs provide to local communities cannot be achieved. These benefits include increasing local tax bases, facilitating job growth, utilizing existing infrastructure, protecting public health and the environment, and reducing the development pressure on undeveloped, open land.

In the 20 years since the inception of the United States Environmental Protection Agency's (U.S. EPA) brownfields program, federal funding that supports State brownfields programs [known as **Standard 128(a) grants**] has remained at its initial 2003 level while the number of applicants requesting funding has more than doubled. In 2021, the Bipartisan Infrastructure Law (BIL) provided the first ever increase to State brownfields funding via Supplemental 128(a) grants, by providing additional funding over five fiscal years (2022-2026). This Supplemental 128(a) funding is in addition to the Standard 128(a) grants. While States only just received these Supplemental 128(a) funds between November 2022 and January 2023, the BIL funding increase has already resulted in significant improvements to brownfields programs across the nation.

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) believes there should be a permanent increase in the **Standard 128(a)** Congressional Appropriation, to levels currently provided by the combination of Standard 128(a) and Supplemental 128(a) BIL funding. This permanent increase in appropriations (from $50,000,000 to $110,000,000), will ensure that State brownfields programs are able to provide the critical support necessary for a robust national brownfields program.

[1] A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

[2] The Association of State and Territorial Solid Waste Management Officials (ASTSWMO), is an organization representing the 50 States, 5 Territories, and the District of Columbia (hereinafter "States"). Although this position paper focuses on States' perspective, it should be noted that Tribal Nations have their own brownfields programs and are also recipients of 128(a) funding.

The Importance of Brownfield Redevelopment

Brownfields are properties that are abandoned or underutilized due to contamination or the perception of contamination, and are evidence of our country's proud industrial, commercial, and social heritage. These once thriving properties contribute to the economic, social, and environmental decline in our communities. Their redevelopment has substantial benefits, including:

- Addressing environmental contamination that threatens public health, especially for sensitive populations living in small or underserved communities.
- Creating jobs and sparking private investment along rural main streets, urban downtowns, and local neighborhoods and communities.
- Increasing property values and the tax base where redevelopment occurs including reclaiming property taxes from tax-delinquent and abandoned properties, sales tax from commercial reuses, and income tax for jobs created.
- Encouraging the reuse of existing infrastructure, thereby reducing the need to expand and maintain costly new roads and utilities, while at the same time reducing sprawl and preserving green space.
- Eliminating blight, facilitating community revitalization, and providing spaces for critical community services such as healthcare centers, housing, parks, and day care centers.

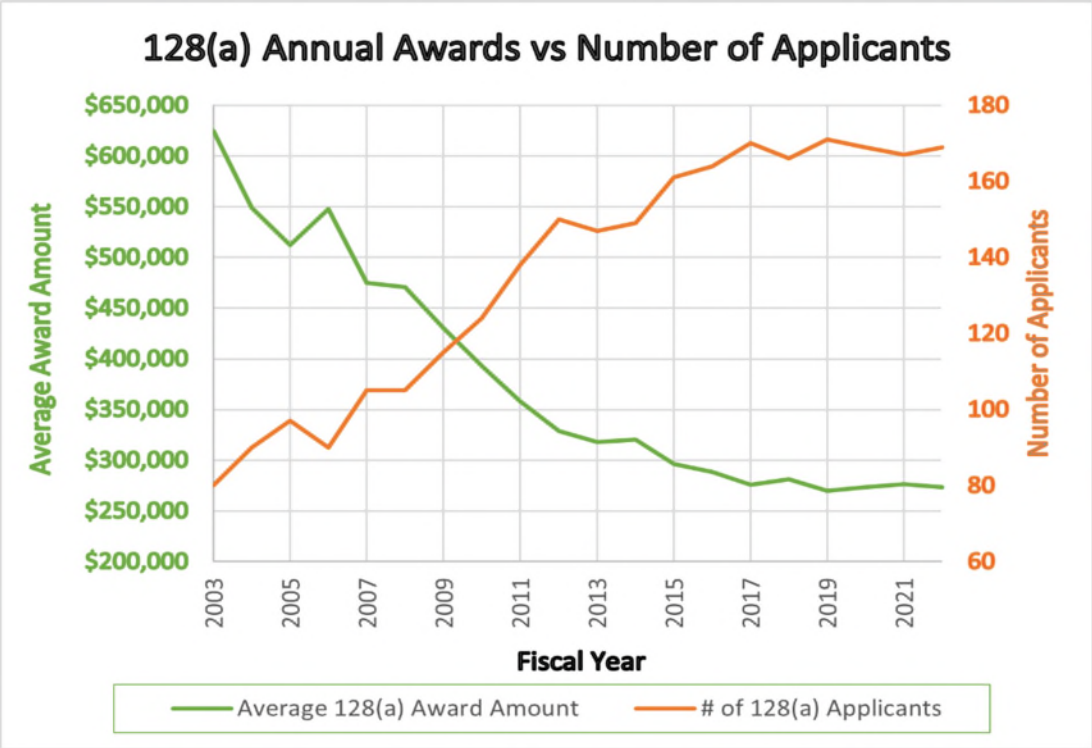
Origin of the Brownfields Program

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act [Pub.L.No. 107-118, 115 stat. 2356 (the Brownfields Law)]. The Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) by providing funds to assess and clean up brownfields. The law also clarified CERCLA liability protections and provided funds to establish State 128(a) brownfields programs.

128(a) Funding Background

Since the Brownfields Law was enacted 20 years ago, the amount of Standard 128(a) funding available to States has remained stagnant, at just under $50,000,000. Meanwhile, the number of 128(a) applicants requesting this funding has continued to rise to more than double the 2003 levels, from 80 applicants to over 160, reducing the average award from over $600,000 to under $300,000 per applicant. The graph below illustrates the magnitude of this funding shortfall.

The reduction in the average award amounts coupled with inflation and the increased costs associated with environmental cleanups, greatly hampers the States' abilities to provide robust brownfield redevelopment programs, especially to those in small or underserved communities.



State Brownfield Programs

There are no national brownfields cleanup standards or oversight. Instead, State programs are at the forefront of brownfields cleanup and redevelopment, taking on the responsibilities of these brownfields programs to ensure protective and sustainable cleanups. The purpose of the 128(a) brownfields program is to build, grow, and maintain successful brownfields programs within the States. In particular, Federal funding provides critical assistance to local units of government, developers, and other organizations, who address the day-to-day cleanup and redevelopment of blighted, underutilized, and contaminated properties. Services provided by State brownfields programs can include:

- Providing no-cost Phase I environmental site assessments of properties to meet U.S. EPA's All Appropriate Inquiry (AAI) standards. These assessments provide critical liability protection for prospective purchasers, open up funding opportunities for cleanup and redevelopment, and reduce the risk of encountering environmental surprises during the redevelopment.
- Providing no-cost Phase II environmental site assessments which can include sampling to identify hazardous substance and petroleum contamination.
- Providing no-cost hazardous material surveys which can include asbestos and lead-based paint inspections.
- Supporting local officials and community groups in the planning and preparation of applications for the nationally competitive U.S. EPA 104(k) Brownfields Assessment, Cleanup, Multi-purpose, or Revolving Loan Fund Grants and subsequently providing technical oversight once grants are awarded.

- Conducting no-cost cleanups at publicly owned properties (such as abandoned gas stations, hospitals, schools, and downtown buildings) to address hazardous building materials, soil, and groundwater contamination to meet state/federal cleanup regulations.
- Conducting outreach and education for community leaders, non-profits, small-business owners, economic developers, lenders, and realtors to inform them about the brownfield redevelopment process and State and Federal assistance programs.
- Providing assistance to local communities to navigate the environmental regulatory process and ensure assessments and cleanups are protective of human health and the environment.

These benefits especially impact rural and small communities who do not have the capacity to apply for and manage a direct U.S. EPA 104(k) brownfields grant on their own. Additional highlights of State brownfields programs can be found by clicking on the link below: https://www.epa.gov/brownfields/brownfields-and-land-revitalization-activities-near-you.

BIL Funding

In 2022, Supplemental 128(a) funding provided by BIL ($60,000,000 per year) more than doubled the amount of Standard 128(a) funding allocated to States. The Standard 128(a) annual appropriation ($50,000,000) plus the additional Supplemental BIL funding ($60,000,000) resulted in an increase of the average award amount to $615,000 per applicant, which is comparable to the average awards provided in 2003, when the Standard 128(a) program was first introduced ($625,000 per applicant). This additional funding has allowed overburdened State programs to build capacity in the short term. For example:

- Many States are utilizing the BIL funding to temporarily hire additional staff to increase their technical assistance, education, and outreach to communities with brownfield properties in need of redevelopment.
- Many States are providing direct assessments and cleanups in underserved communities that would most likely not be able to compete at a national level for U.S. EPA 104(k) brownfields grants.
- BIL funding is being utilized by several States to enhance the monitoring, inspection, and tracking of institutional controls at properties where the risks associated with remaining contamination are managed through use and maintenance controls.
- Information regarding contaminated properties is being made readily accessible through BIL funded enhancements and upgrades to current State public information systems and by transferring hard copy historical documents into electronic format, establishing electronic data submittal processes, and developing databases for collecting and tracking brownfield data.

All of the activities described above address long term/ongoing State Program needs. Unless States are continuously funded at these increased Supplemental 128(a) BIL funding levels, the activities described above will cease and communities across the country will not realize the incredible benefits of robust, fully functioning state brownfields programs.

Impacts on State Programs

128(a) funds are an essential component of every State's brownfields program. No State receives sufficient State or Federal funds to cover all of their brownfields program costs. The decline in State brownfields budgets is negatively impacting the redevelopment of brownfield properties across the nation by reducing the services State brownfields programs can provide and the number of communities they are able to assist. If not funded at these increased Supplemental 128(a) BIL levels, the following activities will be negatively impacted:

1. Small and underserved communities will continue to be disproportionally impacted by brownfields, as lack of staffing limits the ability of State programs to adequately service them.
2. State-funded assessment and cleanup assistance at blighted, community-owned properties will be significantly reduced or eliminated.
3. Vital redevelopment assistance such as redevelopment and financial planning, community outreach, and building local brownfields capacity will be cut back or eliminated from State offerings.

Brownfield Return on Investment

The redevelopment of a brownfield has significant economic, social, and environmental benefits. These benefits are often difficult to measure because the impact extends beyond simply dollars invested. Benefits of brownfield redevelopment often include an increase in wages and surrounding property values, a decrease in crime, and an increase in overall community vitality, health, and welfare as environmental conditions improve.

Despite the difficulty in measuring the full impact of brownfields redevelopment, Federal and State program statistics are available that point to the brownfields program's value and impact. For example, U.S. EPA brownfields program statistics show that since 2006, State and tribal program's use of Standard 128(a) funds has resulted in:

- An average enrollment of over 33,727 properties annually into State brownfields programs,
- Completion of more than 216,362 cleanups, and
- Over 364,599,000 acres cleaned up and ready for reuse.

The following State brownfields program statistics highlight the economic impact of brownfields redevelopment and the return on investment realized:

- Since 2015, Oklahoma has garnered over $10,000,000 in new State and income taxes annually on remediated properties. There has also been a 147% increase in job growth on redeveloped brownfields and surrounding properties.
- In 2022 the Michigan Department of Environment, Great Lakes, and Energy (EGLE) provided brownfield assistance to a total of 70 projects in 47 Michigan communities. The roughly $24,000,000 in State brownfields funding resulted in an estimated 1,700 jobs and $853,000,000 in capital investment. This equates to an estimated return on investment of roughly $35 for each $1 of State funding provided.

Brownfields funding directly results in measurable and trackable improvements in environmental and public health conditions. It enhances local economic conditions and increases critical local tax funding by redeveloping blighted tax-delinquent properties.

Brownfield redevelopment resources provided by State and U.S. EPA brownfields programs are foundational economic development tools utilized nationwide in communities ranging from small towns, dense urban areas, and rural communities. These resources are particularly crucial to leverage additional public and private investment in low population and overburdened communities where private development may not occur without initial government investment.

ASTSWMO Position

ASTSWMO believes that a robust brownfields program at all levels of government, working in concert with the private sector, is essential to the nation's environmental, economic, and social health.

It is ASTSWMO's recommendation that following the expiration of Supplemental 128(a) BIL funds in 2026, the Standard 128(a) grant appropriation be maintained at the combined Standard 128(a) and Supplemental 128(a) BIL funding level (for a total of $110,000,000 per year).

Current Supplemental 128(a) BIL funding temporarily enhances State programs' ability to provide critical community assistance such as:

- Site specific assessments and cleanups in small and underserved communities.
- Monitoring of institutional controls to ensure cleanups are protective.
- Increased public access to information and data associated with contaminated properties.

This increased federal investment in the brownfields program has resulted in additional program capacity. The continued support to State programs via 128(a) brownfields grants is essential for developing and maintaining a successful brownfield cleanup and redevelopment process throughout the nation and especially in small and underserved communities.

Approved by the ASTSWMO Board of Directors on April 25, 2023.